

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JOSEPH TORRES,**

**Plaintiff,**

**v.**

**No. 10-cv-0267 BB/SMV**

**JOE WILLIAMS; GEORGE TAPIA;  
JOE PACHECO, Unit Manager; FNU GATTI;  
FNU VARGASS, Correctional Officer;  
FNU BURNING, Correctional Officer;  
DAVID GALLEGOS, Transport Officer;  
CMS MEDICAL STAFF; and FNU BELL, Sgt.,**

**Defendants.**

**ORDER TO SHOW CAUSE**

THIS MATTER is before the Court *sua sponte* under 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6). Plaintiff is ordered to show cause why his claims against “CMS Medical Staff” should not be dismissed for failure to clearly identify the CMS staff he means to name as Defendants.

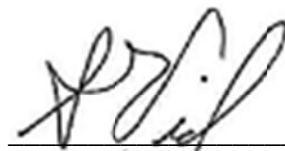
The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under § 1915(e)(2) “at any time if . . . the action . . . is frivolous or malicious; [or] fails to state a claim on which relief may be granted.” The Court also may dismiss a complaint *sua sponte* under Fed. R. Civ. P. 12(b)(6) for failure to state a claim if “it is ‘patently obvious’ that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (quoting *McKinney v. Okla. Dep’t of Human Servs.*, 925 F.2d 363, 365 (10th Cir. 1991)).

Plaintiff, who is incarcerated, appearing pro se, and proceeding *in forma pauperis*, filed a civil rights action on March 22, 2010. Civil Rights Complaint Pursuant to 28 U.S.C. § 1983 [Doc. 1] (“Complaint”); Memorandum Opinion and Order [Doc. 14] at 1. Plaintiff alleges that his constitutional rights were violated during his incarceration at the Penitentiary of New Mexico (“PNM”), and names “CMS Medical Staff” as one of the Defendants. *See* Complaint [Doc. 1] at 1. However, simply naming “CMS Medical Staff” as Defendant (or, possibly, as Defendants) neither describes an entity defendant nor does it state with particularity which staff members Plaintiff seeks to sue. In effect, naming only “CMS Medical Staff” as Defendant is the equivalent of naming no CMS medical staff at all.

Accordingly, the Court will require Plaintiff to submit the specific name(s) of the CMS staff members that he intends to name as Defendant(s) in lieu of “CMS Medical Staff.”

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff show cause no later than **August 31, 2012**, why the Defendant(s) described as “CMS Medical Staff” should not be dismissed for failure to state with particularity the CMS staff members who allegedly caused Plaintiff’s injuries.

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
United States Magistrate Judge